

REMARKS

Summary of the Office Action

The drawings are objected to.

Claims 1 – 16 are withdrawn from consideration, with claims 18 – 20 previously canceled without prejudice or disclaimer.

Claims 17 and 21 – 23 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claim 22 stands rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

Claims 17 and 21 – 23 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Journal Publication “The Complete Guide to Cosmetic Facial Surgery” by John A. McCurdy M.D. (“McCurdy”) in view of Journal Publication “Video-Endoscopic Facelift Aesthetic Plastic Surgery” by Luiz S. Toledo, M.D. (“Toledo”) further in view of U.S. Patent Application Publication No. 2003/0018350 to Zucherman *et al.* (“Zucherman”).

Summary of the Response to the Office Action

Applicant thanks the Examiner for the courtesies extended to Applicant’s representatives during the Examiner Interview conducted on December 14, 2010.

Applicant amends the Figs. 1 – 9C in accordance with the Replacement Drawings submitted with the attached Appendix.

Applicant amends independent claim 17 and dependent claims 22 and 23, with claims 18 – 20 previously canceled without prejudice or disclaimer. Thus, claims 17 and 21 – 23 are pending for consideration. Support for these amendments is found in at least the last paragraph of page 7 and the first three lines of page 8 of the specification as originally filed.

Applicant respectfully submits that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132, and requests reconsideration and timely withdrawal of the pending rejections for at least the reasons discussed below.

Examiner Interview Summary

Applicant thanks the Examiner for the courtesies extended to Applicant's representatives during the in-person interview conducted December 14, 2010. During the interview Applicant's representatives discussed the pending rejections, and were able to reach agreement on amendments that obviate the 35 U.S.C. § 112 rejections set forth in the pending Office Action and distinguish the claimed subject matter over the art of record.

The Objections to the Drawings

The drawings are objected to for containing faded drawings, blurred or illegible text or drawings, skewed slanted images and color or black and white photographs. In response, Applicant amends Figures 1 – 9C in accordance with the Replacement Drawings submitted in the attached Appendix. Applicant submits that the amended drawings comply with the comments of the Office Action, and respectfully requests that the objection to the drawings be withdrawn.

The Rejections under 35 U.S.C. § 112, First Paragraph

Claims 17 and 21 - 23 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office Action states on pages 3 and 4 that claim 17 as previously presented:

- appears to contradict page 7, lines 19 -22 and page 8, lines 1 – 3 of the specification;
- does not appear to recite steps in the correct order;
- does not recite that “sectioning” is completed in the “marked tissue area” and
- does not make clear what “sectioning” is or how it is accomplished.

Applicant's representatives discussed these issues with the Examiner during the December 14, 2010 interview. It was agreed that these issues could be overcome by amending claim 17 step a) to recite "marking an area of tissue for cutaneous tissue detachment" (emphasis added) and amending step f) to recite that that sectioning occurs after progressively stretching the tapered blood vessel. The Examiner also agreed that the last paragraph of page 7 and the first three lines of page 8 of the specification adequately define what "sectioning" is and how it is accomplished. This portion of the specification defines sectioning as:

a process which launches a migration of blood platelets to the injured area, followed by an immediate formation of blood clots, which are retained within the vascular extremities, which were subjected to progressive stretching with substantial tapering of their lumens prior to sectioning, thereby obtaining the incarceration of the clots in the extremities of the sectioned vessels, preventing the blood from flowing.

Accordingly, Applicant respectfully submits that amended claim 17 complies with the requirements of 35 U.S.C. § 112, first paragraph. Applicant further submits that claims 21 – 23 also comply with the requirements of 35 U.S.C. § 112, first paragraph, at least for their dependence from amended claim 17. For at least these reasons, Applicant respectfully requests that the rejections of claims 17 and 21 – 23 under 35 U.S.C. § 112, first paragraph, be withdrawn.

The Rejections under 35 U.S.C. § 112, Second Paragraph

Claim 22 stands rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Specifically, claim 22 stands rejected for lacking sufficient antecedent basis for "the cutaneous tissue area" in line 2 of claim 22. Applicant amends claim 22 to recite instead "marked" tissue area instead of "the cutaneous" tissue area. Antecedent basis for this amendment is provided in at

least step a) of amended claim 17, which recites “marking an area of tissue for cutaneous tissue detachment” (emphasis added).

Applicant respectfully submits that amended claim 2 complies with 35 U.S.C. § 112, second paragraph. Applicant further respectfully submits that this amendment does not narrow the intended scope of the claims, and therefore Applicant does not relinquish any subject matter by this amendment. For at least these reasons, Applicant requests that the rejections of claim 22 under 35 U.S.C. § 112, second paragraph, be withdrawn.

The Rejections under 35 U.S.C. §103

Claims 17 and 21 – 23 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over McCurdy in view of Toledo, further in view of Zucherman. Applicant disagrees, and respectfully submits that the combined references do not disclose or suggest all of the claimed features, nor would a person of ordinary skill in the relevant field be prompted to combine the cited prior art in the manner claimed.

To establish an obviousness rejection under 35 U.S.C. § 103(a), four factual inquiries must be examined. The four factual inquiries include (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of secondary consideration. *Graham v. John Deere*, 383 U.S. 1, 17-18 (1966). In view of these four factors, the analysis supporting a rejection under 35 U.S.C. § 103(a) should be made explicit, and should “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l. Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). Furthermore, even if the prior art may be combined, there must be a

reasonable expectation of success, and the reference or references, when combined, must disclose or suggest all of the claim limitations. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Here, even if the references could be combined with a reasonable expectation of success, the combined references fail to prompt a person of ordinary skill in the relevant field to combine the cited prior art to achieve the claimed subject matter. Specifically, Applicant respectfully traverses the assertion on page 7 of the Office Action that Zucherman teaches that steps c) through h) are performed without cauterization. Applicant submits that this is incorrect, as there is no teaching in Zimmerman about minimizing blood loss, nor is there any evidence that the Zimmerman device inherently causes sectioning to occur. Furthermore, Zucherman teaches a tool that is exclusively designed for surgeries in small areas of the backbone, as seen by the short length and shape of the working portion of the Zucherman dilator 100. Rather than “passing a first rod having a first diameter through [an] entire marked cutaneous tissue area” only tip 106 is inserted into a patient, from first end 110 to second end 108. Zucherman at [0013]. The openings made by the Zucherman devices are approximately ten times smaller than the incisions recited in claim 17, with nothing suggesting that the Zucherman dilator could be used for cutaneous detachment, especially incisions of the size recited in the claims. Accordingly, Zucherman fails to teach or suggest each and every feature of amended claim 17.

None of the other cited references make up for the deficiencies of Zucherman. The Office Action expressly acknowledges, for example, that “Toledo discloses the use of cauterization for hemostasis.” Office Action at 5. McCurdy teaches using adrenaline or anesthesia to control bleeding, McCurdy at 47 and 50, but discloses that these techniques can actually increase the

possibility of postoperative bleeding. *Id.* at 51. Stevenson teaches ensuring hemostasis, but is silent as to how it is achieved. Stevenson at 2270. Thus, alone or combined, the cited references fail to teach or suggest each and every element of amended claim 17.

For at least these reasons, Applicant respectfully submits that amended claim 17 is allowable, and that claims 21 – 23 are allowable at least for their dependency from allowable claim 17. Since none of the other prior art of record, alone or in any combination, discloses or suggests all the features of the claimed subject matter, Applicant respectfully requests that the rejections of claims 17 and 21 – 23 under 35 U.S.C. §103(a) be withdrawn.

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CONCLUSION

Applicant believes that a full and complete response has been made to the pending Notice and respectfully submits that all of the stated grounds for rejection have been overcome or rendered moot. Accordingly, Applicant respectfully submits that all pending claims are allowable and that the application is in condition for allowance.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative at the number below to expedite prosecution.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,
THE NATH LAW GROUP

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APPENDIX – REPLACEMENT DRAWING SHEETS